

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEBORAH K. STAMM,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:18-cv-1409

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court affirm the Commissioner's decision to deny Plaintiff's claim for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) Benefits. The matter is presently before the Court on Plaintiff's three objections to the Report and Recommendation, to which Defendant filed a response. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

1. RFC

Plaintiff first argues that this Court should not adopt the Report and Recommendation "because the ALJ's residual functional capacity (RFC) findings are not supported by substantial evidence" (Pl. Obj., ECF No. 15 at PageID.1340-1341). A party filing objections to a report and recommendation is required to "specifically identify the portions of the proposed findings,

recommendations or report to which objections are made and the basis for such objections.” W.D. Mich. LCivR 72.3(b). Plaintiff does not specifically identify any portion of the Magistrate Judge’s proposed findings, recommendations or report to which this objection is made or the basis for such objection. Therefore, the objection is denied.

2. Waiver

Plaintiff next argues that “she did not waive legal arguments as depicted in the R&R” (Pl. Obj., ECF No. 15 at PageID.1340-1343). This objection concerns two alleged instances of waiver.

First, the Magistrate Judge found that Plaintiff waived her initial claim of error that “the ALJ failed to follow SSR 96-3p when he did not consider her diabetes and gastroparesis ‘severe impairments’” (R&R, ECF No. 14 at PageID.1333). Plaintiff’s objection in this regard is moot inasmuch as the Magistrate Judge nonetheless considered the merits of her claim of error (*id.* at PageID.1333-1334).

Second, the Magistrate Judge found that Plaintiff also waived any error based on SSR 16-3p because Plaintiff had cited the ruling “in a heading and in the last sentence of section (B)(3) of her brief,” without providing any developed argument (R&R, ECF No. 14 at PageID.1337). In her objections, Plaintiff argues that “even if the argument in the Initial Brief did not cite the text of SSR 16-3p, the Plaintiff did not waive her argument because she cited the underlying case law and regulations” (Pl. Obj., ECF No. 15 at PageID.1343). Plaintiff’s objection lacks merit. It is “not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to ... put flesh on its bones.” *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997).

3. “Remaining Issues”

Last, Plaintiff indicates that “[a]s to the remaining issues, Ms. Stamm incorporates by reference the arguments in her Initial Brief and Reply Brief” (Pl. Obj., ECF No. 15 at PageID.1341,

1344). Merely incorporating prior arguments, without directing the Court's attention to specific issues decided by the Magistrate Judge, does not constitute a valid objection to the Magistrate Judge's Report and Recommendation. See W.D. Mich. LCivR 72.3(b); *Neuman v. Rivers*, 125 F.3d 315, 323 (6th Cir. 1997); *Kelly v. Withrow*, 25 F.3d 363, 366 (6th Cir. 1994). Rather, "[t]he functions of the district court are effectively duplicated as both the magistrate and the district court perform identical tasks." *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991).

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 15) are DENIED, the Report and Recommendation of the Magistrate Judge (ECF No. 14) is APPROVED and ADOPTED as the Opinion of the Court, and the decision of the Commissioner of Social Security is AFFIRMED.

A Judgment will be entered consistent with this Opinion and Order. See FED. R. CIV. P. 58.

Dated: October 2, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge